UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

HUBER SPECIALTY HYDRATES, LLC,	)	
	)	
Respondent,	)	
	)	
And	)	Case 15-CA-168733
	)	
	)	
UNITED STEELWORKERS, LOCAL 4880,	)	
	)	
Charging Party	)	
	)	Cases 15-CA-177324
And	)	15-CA-179549
	)	
	)	
BRANDON HARMON,	)	
	)	
An Individual	)	

RESPONDENT'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

NOW COMES Huber Specialty Hydrates, LLC, Respondent herein, and files its Exceptions to Administrative Law Judge's Decision dated January 29, 2018. Respondent simultaneously files its Brief in Support of Exceptions to Administrative Law Judge's Decision.

EXCEPTIONS [1]

Respondent takes exception to the Administrative Law Judge's (ALJ's):

1. Finding that Respondent did not respond to the January 14 grievance filed by the Union, on the ground that this finding is not supported by the record. (JD 6: 40-41).

[1] References to the ALJ's decision are designated as "JD" followed by the appropriate page and line numbers. References to the record are set forth in Respondent's Brief in Support of Exceptions.

2. Finding "that Respondent unilaterally changed its attendance policy without providing the Union with an opportunity to bargain," on the grounds that this finding is not supported by the record and is erroneous as a matter of law. (JD 11: 41-42).

3. Finding that Respondent admitted that the changes made to the attendance policy were "unilateral" in nature, on the ground that this finding is not supported by the record. (JD 12: 16-18).

4. Refusal to adopt and apply the "contract coverage" analysis applied by the United States Court of Appeals for the District of Columbia Circuit, as well as other circuit courts, on the ground that this is the correct analysis that best furthers the policies of the Act and should be adopted by the Board. (JD 12: 39-44).

5. Findings and/or conclusions that "the clear and unmistakable waiver standard is applicable in this case," that "Respondent's reliance on *Howard Industries* and *Ingham* is misplaced," and that *Howard Industries* and *Ingham* are materially distinguishable, on the grounds that the waiver doctrine is inapplicable as a matter of law and *Howard Industries* and *Ingham* clearly apply a different analysis when the contract establishes explicit procedural steps to be followed before policy or rule changes are made. (JD 13: 34-47; 14: 1-11).

6. Finding and/or conclusion that "Respondent's reliance on *Provena* is misplaced because the management-rights clause at issue lacks the specificity of the *Provena* clause," on the grounds that this finding and/or conclusion is not supported by the record and is erroneous as a matter of law.

7. Discussion and analysis of *Provena* and finding and/or conclusion that "the language in the management rights clause at issue is far too vague and general to support a finding that by agreeing to the clause the Union had clearly and unmistakably waived its right to

bargain over attendance issues," on the grounds that the ALJ misconstrued *Provena* and her finding and/or conclusion is not supported by the record and is erroneous as a matter of law. (JD 14: 42-47; 15: 1-15).

8. Finding and/or conclusion that "the bargaining history of the parties does not establish that the Union waived its right to bargain over the new attendance policy, on the grounds that this finding and/or conclusion is not supported by the record and is erroneous as a matter of law. (JD 15: 40-41).

9. Finding and/or conclusion that "the Union's agreement to withdraw, during the 2015 contract negotiations, its demand to have the attendance policy incorporated into the CBA; and its agreement to delete the last sentence of the management-rights clause in the prior contract are likewise insufficient to prove that the parties' bargaining history shows that the union waived its right to bargain over the new attendance policy," on the grounds that this finding and/or conclusion is not supported by the record and is erroneous as a matter of law. (JD 16: 10-14).

10. Finding "that the evidence is insufficient to find that the Union explicitly waived its rights with full intent to release its interest in the matter," on the grounds that this finding is not supported by the record and is erroneous as a matter of law. (JD 16: 23-24).

11. Finding that "Respondent violated Section 8(a)(1) and (5) of the Act when it unilaterally changed the attendance policy without first bargaining over the changes with the Union," on the grounds that this finding is not supported by the record and is erroneous as a matter of law. (JD 16: 24-26).

12. Conclusion of Law number 3 that "Respondent has violated Section 8(a)(1) and (5) of the Act by failing and refusing to bargain collectively with the Union regarding changes to

the attendance policy," on the grounds that this conclusion is not supported by the record and is erroneous as a matter of law. (JD 22: 1-2).

13. Conclusion of Law number 4 that this "violation is an unfair labor practice that affect commerce within the meaning of Section 2(6) and (7) of the Act," on the ground that this finding and/or conclusion is not supported by the record and is erroneous as a matter of law. (JD 22: 4-5).

14. Remedy, on the grounds that no violation of the Act occurred. (JD 22: 10-31).

15. Remedy, which speaks in terms of discrimination, on the grounds that no discrimination (8(a)(3)) violation was pled or found. (JD 22: 10-31).

16. Order, on the grounds that no violation of the Act occurred. (JD 22: 33-50; 23: 1-50).

CONCLUSION

Respondent requests that the Consolidated Complaint be dismissed in its entirety.

Dated this 16th day of March 2018

/s/ Charles P. Roberts III

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CERTIFICATE OF SERVICE

I certify that this day, March 16, 2018, I served the foregoing EXCEPTIONS on the following parties of record in the manner indicated below:

BY ELECTRONIC MAIL

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